

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CODY LEAVITT,

Petitioner,

v.

DWIGHT NEVEN, et al.,

Respondents.

Case No. 2:12-cv-00625-MMD-RJJ

SCHEDULING ORDER AFTER
APPOINTMENT OF COUNSEL

The Court previously appointed the CJA Counsel, Todd M. Leventhal, Esq. to represent the petitioner (dkt. no. 31). After the entry of this order petitioner filed a motion for evidentiary hearing and discovery (dkt. no. 19), a motion for reconsideration of bail pending appeal (dkt. no. 21), a motion for reconsideration of appointment of next friend (dkt. no. 22), and a motion for clarification (dkt. no. 25). These motions are all denied without prejudice to permit counsel to review the matter, confer with his client and determine whether to bring these motions at that time.

Counsel must enter an appearance on petitioner's behalf. Respondents have appeared through counsel, Karen A. Whelan, Deputy Attorney General. Her contact information is 100 North Carson Street, Carson City, Nevada, 89701, 775-684-1100.

Petitioner and his counsel should pay very close attention to the effect of the one-year statute of limitations applicable to federal habeas corpus petitions pursuant to 28 U.S.C. §2244(d)(1) (part of the Antiterrorism and Effective Death Penalty Act (AEDPA)). In addition, petitioner and his counsel should be aware of the holdings in

1 *Duncan v. Walker*, 533 U.S. 167 (2001), and *Fail v. Hubbard*, 315 F.3d 1059 (9th Cir.
2 2002). The practical effect of *Duncan* and *Fail* is that the one-year limitations period
3 applicable to all federal habeas corpus petitions will generally not be tolled during the
4 pendency of a federal habeas corpus petition. This means that any subsequent habeas
5 corpus petition filed in this court – for example, a petition filed after returning to state
6 court to exhaust any unexhausted claims – may be untimely under the applicable
7 statute of limitations, and the time during which this habeas corpus case is pending will
8 not toll or otherwise excuse compliance with that statute.

9 It is appropriate at this time for the Court to enter orders regarding scheduling in
10 this case.

11 IT IS THEREFORE ORDERED that counsel for petitioner shall enter an
12 appearance with the Court and shall contact petitioner as soon as reasonably possible
13 to: (a) review the procedures applicable in cases under 28 U.S.C. §2254; (b) discuss
14 and explore with petitioner, as fully as possible, the potential grounds for habeas corpus
15 relief in petitioner's case; and (c) advise petitioner that all possible grounds for habeas
16 corpus relief must be raised at this time in this case, and that the failure to do so will
17 likely result in the omitted grounds being barred from future review under the rules
18 regarding abuse of the writ.


19 IT IS FURTHER ORDERED that counsel for petitioner and counsel for
20 respondents shall within forty-five (45) days file a joint statement describing what
21 portions of petitioner's state court record have been obtained and what portions are
22 missing. Counsel for respondents should make available to counsel for petitioner
23 (photocopying costs at the latter's expense), as soon as reasonably possible, a copy of
24 whatever portions of the state court record they possess regarding the judgment
25 petitioner is challenging herein.

26 IT IS FURTHER ORDERED that counsel for petitioner shall file an amended
27 petition for writ of habeas corpus within ninety (90) days, which shall include all known
28 grounds for relief (both exhausted and unexhausted). Respondent shall have thirty (30)

1 days after the filing of the amended petitioner within which to answer, or otherwise
2 respond to, the amended petition.

3 IT IS FURTHER ORDERED that all pending motions (dkt. nos. 19, 21, 22, and
4 25) are denied without prejudice.

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6 DATED THIS 22nd day of August 2012.

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9 UNITED STATES DISTRICT JUDGE
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